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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/930,320 | 08/15/2001 | May Shana'a | J6638(C) | 3577 |

201 7590 07/29/2003

UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

[REDACTED] EXAMINER

WANG, SHENGJUN

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 1617 | 15 |

DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-----------------|----------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/930,320 | SHANA'A ET AL. |
| Examiner | Art Unit | |
| Shengjun Wang | 1617 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 May 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-11 and 13-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-11 and 13-29 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) Paper No(s). <u>14</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of applicants' amendments and remarks submitted May 6, 2003 is acknowledged.

Claim Rejections 35 U.S.C. 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-11, 13-22, and 25-29 rejected under 35 U.S.C. 103(a) as being unpatentable over Rath et al. (US 5,972,322, of record), in view of Rigg et al. (US 5,622,692, of record) and Stewart (WO98/30189, of record) for reasons set forth in the prior office action.

Claim 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rath et al. (US 5,972,322, of record), in view of Rigg et al. (US 5,622,692, of record) and Stewart (WO98/30189), and in further view of Tartaglione (US 4,851,062, of record) for reasons set forth in the prior office action.

Response to the Arguments

Applicants' amendments and remarks submitted May 6, 2003 have been fully considered. The amendments are persuasive to over come the rejections under 35 U.S.C.112 set forth in the prior office action, but are not persuasive with respect to the rejection under 35 U.S.C. 103 for reasons discussed below.

3. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on

combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

4. Applicants' arguments that whether thickener should be considered as variable or base ingredient in the claimed invention and/or in the cited references are irrelevant to the patentability of the instant application. The cited references, as a whole, teach method of providing customized personal care product with a base formulation, and variables, which may be chosen by customers. Whether thickener should be a base (common) ingredient, or variable, is a matter that is within the skill of artisan, which would be obvious depending on the type of products and the population of customers. In fact the specification state: "the viscosity of the product base can be varied, from pourable liquid, to a thick paste or extrudable, depending on its composition and the amounts of thickener added to the base." The claimed invention does not have any limitation as to how much the thickener should be in the base, or whether the thickener should be excluded from the variable. Specifically, there is no clear definition of the "benefit agents" which would exclude thickener. To the contrary, the benefit agents herein include anything useful in the composition, from solvent to preservatives. Some of the exemplified agents are considered thickener in the art, such as propylene glycol or the like, and polyethylene glycol derivatives. See, the specification, pages 6, line 29 to page 7, line 20.

5. As to the comment that Rath only provide a kit, which have limited contents. Again applicants should review the cited references as whole, particularly, Steward teach that it is known in the art to provide a plurality of variants available for customers to select. Further, Rath expressly teach various coloring agents, and the customers are not dictated to any specific color, they have choice.

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6. In response to applicants' remarks that Stewart, or Rigg et al., does not teach expressly the variants have at least two ingredient in common, the examiner view such limitation as obvious to one of ordinary skill in the art. Particularly, each of the variants would have a similar carrier system, which would have essentially the same ingredients. See, particularly the color concentrates disclosed by Rath (example 16), wherein the concentrates have at least five ingredients in common.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

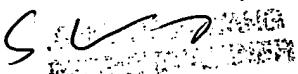
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Patent Examiner



Shengjun Wang

July 27, 2003